

House Bill 1178 (AS PASSED HOUSE AND SENATE)

By: Representatives Hill of the 180th, Channell of the 116th, Cooper of the 41st, Brown of the 69th, Jenkins of the 8th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to
2 pharmacists and pharmacies, so as to provide for the establishment of a program through
3 which unused prescription drugs may be distributed for use by medically indigent persons;
4 to provide for a short title; to provide for definitions; to provide for a pilot program; to
5 provide for the establishment of rules and regulations; to provide for timelines; to provide
6 for limited liability; to provide for construction; to amend Article 7 of Chapter 4 of Title 49
7 of the Official Code of Georgia Annotated, relating to medical assistance generally, so as to
8 provide for certain coverage for pharmacy restocking fees; to amend Code Section 16-12-142
9 of the Official Code of Georgia Annotated, relating to requiring medical facilities or
10 physicians to perform abortions and requiring others to assist, so as to provide that a
11 pharmacist who states in writing an objection to any abortion shall not be required to fill a
12 prescription for a drug if the purpose of the drug is to terminate a pregnancy; to provide that
13 such refusal shall not be the basis for any claim for damages; to provide for the duration of
14 the effectiveness of the written objection; to amend Chapter 34 of Title 31 of the Official
15 Code of Georgia Annotated, relating to physicians for rural areas assistance, so as to revise
16 the purpose of the chapter; to revise certain provisions regarding priority for certain
17 specialties; to amend Chapter 7 of Title 31 of the Official Code of Georgia Annotated,
18 relating to regulation of hospitals and related institutions, so as to revise a definition; to
19 provide for related matters; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Chapter 4 of Title 26 of the Official Code of Georgia Annotated, relating to pharmacists and
23 pharmacies, is amended by adding a new Article 11 to read as follows:

"ARTICLE 11

26-4-190.

This article shall be known and may be cited as the 'Utilization of Unused Prescription Drugs Act.'

26-4-191.

As used in this article, the term:

(1) 'Controlled substance' means a drug, substance, or immediate precursor in Schedules I through V of Code Sections 16-13-25 through 16-13-29 and Schedules I through V of 21 C.F.R. Part 1308.

(2) 'Health care facility' means an institution which is licensed as a nursing home, intermediate care home, personal care home, home health agency, or hospice pursuant to Chapter 7 of Title 31.

(3) 'Medically indigent person' means:

(A) A person who is Medicaid eligible under the laws of this state; or

(B) A person:

(i) Who is without health insurance; or

(ii) Who has health insurance that does not cover the injury, illness, or condition for which treatment is sought; and

whose family income does not exceed 200 percent of the federal poverty level as defined annually by the federal Office of Management and Budget.

26-4-192.

(a) The Georgia State Board of Pharmacy, the Department of Human Resources, and the Department of Community Health shall jointly develop and implement a state-wide program consistent with public health and safety standards through which unused prescription drugs, other than prescription drugs defined as controlled substances, may be transferred from health care facilities to pharmacies designated or approved by the Department of Human Resources for the purpose of distributing such drugs to residents of this state who are medically indigent persons.

(b) The Georgia State Board of Pharmacy, the Department of Human Resources, and the Department of Community Health shall be authorized to develop and implement a pilot program to determine the safest and most beneficial manner of implementing the program prior to the state-wide implementation of the program required in subsection (a) of this Code section.

(c) The Georgia State Board of Pharmacy, in consultation with the Department of Human Resources and the Department of Community Health, shall develop and promulgate rules and regulations to establish procedures necessary to implement the program and pilot program, if applicable, provided for in this Code section. The rules and regulations shall provide, at a minimum:

(1) For an inclusionary formulary for the prescription drugs to be distributed pursuant to the program;

(2) For the protection of the privacy of the individual for whom a prescription drug was originally prescribed;

(3) For the integrity and safe storage and safe transfer of the prescription drugs, which may include, but shall not be limited to, limiting the drugs made available through the program to those that were originally dispensed by unit dose or an individually sealed dose and that remain in intact packaging; provided, however, that the rules and regulations shall authorize the use of any remaining prescription drugs;

(4) For the tracking of and accountability for the prescription drugs; and

(5) For other matters necessary for the implementation of the program.

(d) The state-wide program required by this Code section shall be implemented no later than January 1, 2007, unless a pilot program is implemented pursuant to subsection (b) of this Code section, in which case state-wide implementation shall occur no later than July 1, 2008.

26-4-193.

In accordance with the rules and regulations promulgated pursuant to Code Section 26-4-192, the resident of a health care facility, or the representative or guardian of a resident, may donate unused prescription drugs, other than prescription drugs defined as controlled substances, for dispensation to medically indigent persons.

26-4-194.

(a) Physicians, pharmacists, other health care professionals when acting within the scope of practice of their respective licenses, and health care facilities shall not be subject to liability for transferring or receiving unused prescription drugs pursuant to this article and in good faith compliance with the rules and regulations promulgated pursuant to Code Section 26-4-192.

(b) Pharmacists and pharmacies shall not be subject to liability for dispensing unused prescription drugs pursuant to this article when such services are provided without reimbursement and when performed within the scope of their practice and in good faith

1 compliance with the rules and regulations promulgated pursuant to Code Section 26-4-192.
2 For purposes of this subsection, a restocking fee paid to a pharmacy pursuant to Code
3 Section 49-4-152.5 shall not be considered reimbursement.

4 (c) Nothing in this Code section shall be construed as affecting, modifying, or eliminating
5 the liability of a manufacturer of prescription drugs or its employees or agents under any
6 legal claim, including but not limited to product liability claims. Drug manufacturers shall
7 not be subject to liability for any acts or omissions of any physician, pharmacist, other
8 health care professional, health care facility, or pharmacy providing services pursuant to
9 this article.

10 (d) Drug manufacturers shall not be subject to criminal prosecution or liability in tort or
11 other civil action for injury, death, or loss to person or property for the donation,
12 acceptance, or dispensing of a drug under the program or for the failure to transfer or
13 communicate product or consumer information or the expiration date of a drug donated
14 under the program.

15 26-4-195.

16 This article shall be construed in concert with Code Section 49-4-152.3."

17 **SECTION 2.**

18 Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to
19 medical assistance generally, is amended by adding a new Code section to read as follows:
20 "49-4-152.5.

21 In the provision of medical assistance pursuant to this article, the department shall allow
22 for the payment and coverage of appropriate restocking fees incurred by a pharmacy which
23 receives and dispenses prescription drugs pursuant to the 'Utilization of Unused
24 Prescription Drugs Act' in Article 11 of Chapter 4 of Title 26."

25 **SECTION 2A.**

26 Code Section 16-12-142 of the Official Code of Georgia Annotated, relating to requiring
27 medical facilities or physicians to perform abortions and requiring others to assist, is
28 amended by striking such Code section and inserting in its place the following:

29 "16-12-142.

30 (a) Nothing in this article shall require a hospital or other medical facility or physician to
31 admit any patient under the provisions of this article for the purpose of performing an
32 abortion. In addition, any person who states in writing an objection to any abortion or all
33 abortions on moral or religious grounds shall not be required to participate in procedures

1 which will result in such abortion; and the refusal of the person to participate therein shall
2 not form the basis of any claim for damages on account of such refusal or for any
3 disciplinary or recriminatory action against the person. The written objection shall remain
4 in effect until the person revokes it or terminates his association with the facility with
5 which it is filed.

6 (b) Any pharmacist who states in writing an objection to any abortion or all abortions on
7 moral or religious grounds shall not be required to fill a prescription for a drug which
8 purpose is to terminate a pregnancy; and the refusal of the person to fill such prescription
9 shall not form the basis of any claim for damages on account of such refusal or for any
10 disciplinary or recriminatory action against the person; provided, however, that the
11 pharmacist shall make all reasonable efforts to locate another pharmacist who is willing to
12 fill such prescription or shall immediately return the prescription to the prescription holder.
13 The written objection shall remain in effect until the person revokes it or terminates his or
14 her association with the facility with which it is filed. Nothing in this subsection shall be
15 construed to authorize a pharmacist to refuse to fill a prescription for birth control
16 medication, including any process, device, or method to prevent pregnancy and including
17 any drug or device approved by the federal Food and Drug Administration for such
18 purpose."

19 SECTION 2B.

20 Chapter 34 of Title 31 of the Official Code of Georgia Annotated, relating to physicians for
21 rural areas assistance, is amended by striking Code Section 31-34-2, relating to the purpose
22 of the chapter, and inserting in lieu thereof the following:

23 "31-34-2.

24 It is the purpose of this chapter to increase the number of physicians in physician under
25 served rural areas of Georgia by making loans to ~~young~~ physicians who ~~recently~~ have
26 completed their medical education and allowing such loans to be repaid by such physicians
27 agreeing to practice medicine in such rural areas."

28 SECTION 2C.

29 Said chapter is further amended in Code Section 31-34-4, relating to loan applicant
30 qualifications and rules and regulations, by striking subsection (c) and inserting in lieu
31 thereof the following:

32 "(c) The board is authorized to consider among other criteria for granting loans under the
33 provisions of this chapter the state residency status and home area of the applying physician
34 and to give priority to those applicants who are physicians ~~specializing in and actively~~

1 ~~practicing obstetrics~~ actively practicing or beginning active practice in specialties
2 experiencing shortages or distribution problems in rural areas of this state as determined
3 by the board pursuant to rules and regulations adopted by it in accordance with this chapter.
4 ~~After giving such priority, the board may also consider, in the following order of priority,~~
5 ~~the applications of physicians specializing in obstetrics/gynecology, family practice,~~
6 ~~general practice, general internal medicine, general pediatrics, general surgery, psychiatry,~~
7 ~~or other medical specialties approved by the board."~~

8 **SECTION 2D.**

9 Chapter 7 of Title 31 of the Official Code of Georgia Annotated, relating to regulation of
10 hospitals and related institutions, is amended in Code Section 31-7-94.1, relating to
11 definitions, by striking paragraph (3) and inserting in lieu thereof the following:

12 "(3) 'Rural county' means a county having a population of less than 35,000 according to
13 the United States decennial census of 1990 or any future such census; provided, however,
14 that for counties which contain a military base or installation, the military personnel and
15 their dependents living in such county shall be excluded from the total population of such
16 county for purposes of this definition."

17 **SECTION 3.**

18 All laws and parts of laws in conflict with this Act are repealed.